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EXAMINER

MARKS, CHRISTINA M

ART UNIT

PAPER NUMBER

3713

DATE MAILED: 12/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/904,385

Applicant(s)

RAVERDY ET AL.

Examiner

C. Marks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 November 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Drawings

The corrected or substitute drawings were received on November 04, 2002. These drawings are acceptable. A complete set of formal drawings are now required in response to this office action.

Specification

The objection to the specification for typographical errors is withdrawn because of the amendment to the specification filed on November 04, 2002.

Claim Rejections - 35 USC § 103

Claims 1-3, 5-6, 11-23, 25-26, and 31-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker (US Patent No. 5,779,549) in view of Chandra et al. (US Publication No. 2002/0169706).

The amendments to the claims present the same limitations as the original claims with the additional limitation of allowing the user to perform a trading transaction for negotiating a transfer. This new limitation has overcome the original rejection of Walker (US Patent No. 6,168,522). The '522 patent teaches of a transfer of "rights" between two users in that digital data related to gaming is transferred. The '522 patent allows for transferring a requested amount to another user device wherein the user devices would adjust their balances accordingly. The '522 patent states that such a transfer is advantageous in that players may share funds between each other in case one is in the need of a right another has. The '522 patent does not disclose a negotiation of rights between users.

However, the amended matter is disclosed by Chandra et al. (US Publication No. 2002/0169706). The filing date of the Chandra et al. publication is after the date of priority claimed by the Applicant from provisional applications 60/250947 and 60/250944. However, upon examination of both priority documents, there appears to be no support for negotiation of rights between users. 60/250947 only states "This capability or token is stored on the user's wireless device allowing this device or, where the ability to exchange tokens between devices is offered, another device to access specific services." The Examiner invites the Applicant to point out the support for negotiating a transfer in either priority document if it exists.

Chandra et al. teach an apparatus and method for providing secure online brokerage by making use of trading programs that allows the apparatus to communicate with other users (Abstract). The client devices may participate in, negotiate, and complete trades with other client devices. A trade is intended to include among other things, a procurement of a credit from a credit extending entity (page 4, paragraph 45, lines 1-6) thus an electronic right as defined by Applicant's specification (a coupon to continue playing a gaming device, a game prize won as user has played the machine and has been awarded a balance, or an object for use in a game in that a balance is used in a game to start play of such game, i.e. credits). It would have been obvious to one skilled in the art at the time of invention to incorporate the teachings of trading/negotiating credits among users as taught by Chandra et al. into the gaming with fees environment disclosed by Walker ('549). One skilled in the art would be motivated to do this because Chandra et al. provide a more advance, elaborate, and user-friendly methods for payment/transferring. By allowing users to not only transfer funds from a bank account as an entry fee, but also transfer funds and negotiate payments between one another, an entire new

level of user-friendly convenience is incorporated into the system. By incorporating the teachings of Chandra et al. to Walker ('549), users would then have further capabilities of settling debts between one another, transferring funds to a team member during team play or transferring ownership rights to the game to another user as well as the ability to negotiate such transfers and the freedom to use their gaming credits for barter.

Claims 4 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker (US Patent No. 5,779,549) in view of Chandra et al. (US Publication No. 2002/0169706) further in view of Wiltshire et al. (US Patent No. 6,409,602).

What Walker and Chandra et al. disclose, teach, and/or suggest has been discussed above and is incorporated herein.

As discussed in the previous action and now applicable to the new rejection, it is well known in the art to use combinations of LAN and Internet to access a server from a remote terminal. In solidifying this point, Wiltshire et al. (US Patent No. 6,409,602) teaches that communications pathways for a computer gaming system can be any combination (therefore including all direct and indirect paths) of electrical cables, optical fibers, RF links, IR links, and protocol interfaces such as LAN and WAN (Column 4, lines 1-3). Wiltshire et al. further includes global communication pathways, the Internet and the World Wide Web (Column 5, lines 31-32). Because it is well known in the art how information travels along a network and with the teachings of Wiltshire et al., it would have been obvious to one skilled in the art at the time of invention to incorporate the versatile and combination networks of Wiltshire et al. to the wireless networks of Walker and the transferring/negotiating capability of Chandra et al. to create various

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means in which to construct a network and transfer/negotiate rights between users while retaining the convenience of portability with a wireless base.

Claims 7 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker (US Patent No. 5,779,549) in view of Chandra et al. (US Publication No. 2002/0169706) further in view of Horstmann et al. (US Patent No. 5,647,825).

What Walker and Chandra et al. disclose, teach, and/or suggest has been discussed above and is incorporated herein.

Walker provides means for users to register for the game of their choice by communicating through the I/O device to the central controller of the game service (Column 14, lines 3-5). The central controller of the game service manages the tournament (Abstract, line 4).

As discussed in the previous action and now applicable to the new rejection, in US Patent No. 5,947,825 Horstmann et al. teaches that in a system of interconnected video games a players auditory senses can be stimulated by incorporating a microphone into each user device in which the player may talk bi-directionally with other players and a pair of loudspeakers in which the player will be able to hear (Column 1, lines 49-51).

Furthermore, Walker also shows of a way to credit user accounts when they have been awarded prizes based upon meeting a certain set of pre-selected requirements. The central controller accesses the tournament database to retrieve the pre-established performance levels for the awarding or prizes. The central controller then reviews the performance levels of each player relative to the requirements for awarding prizes and then updates the winning player's database record to reflect that awards have been allocated to them. The central controller then distributes the prizes to the user. (Column 7, lines 61-67; Column 8, lines 1-5). Finally the event server of

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Walker is capable of receiving uploads from user devices in the sense that they can upload certificates from bank accounts or credit cards in order to assure that they will be allowed to participate in said tournament (Column 7, 10-15).

It would also be obvious to one skilled in the art at the time of invention to incorporate the communication system described by Horstmann et al. to the basic communication of simple transfers as taught by Chandra et al. to the overall gaming system shown by Walker ('549) in order to bring a more sophisticated level of communication between gaming users in which they could actively talk in real time, thus speeding up the process of any pending transaction, such as a trade, yet still be able to do so remotely and instantly, without having to actually meet face-to-face.

Claims 8 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker (US Patent No. 5,779,549) in view of Chandra et al. (US Publication No. 2002/0169706) further in view of Ginter et al. (US Patent No. 6,389,402).

What Walker and Chandra et al. disclose, teach, and/or suggest has been discussed above and is incorporated herein.

While it would have been inherent and desirable for operation in Chandra et al. to be comprised of the listed limitations in order for the transfer function to work properly and efficiently, it is specifically shown by Ginter et al. (US Patent No. 6,389,402) that these elements are used in rights management.

As discussed in the previous action and now applicable to the new rejection, Ginter et al. teaches about providing systems and methods for secure transaction management and electronic rights protection. The reference instructs that a virtual distribution environment (VDE) should

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provide and enforce a secure chain of handling and control to protect rights of various participants in electronic commerce or other electronic-facilitated transactions (Abstract, lines 1-14), thus including gaming.

Ginter et al. further teaches the “complete” VDE container is a logical object structure (Column 127, lines 38-39) and includes a header that identifies the object and identifies one or more owners of the rights to the object (Column 128, lines 1-2). Furthermore, these VDE “certificates” also carry information describing credit history details, summary of authorizations, usage history (such as a transaction history or summary information) (Column 236, lines 20-26). A chronological listing of these elements would have been obvious to one skilled in the art and therefore is not a novel addition to Ginter et al. Furthermore, fields can also be incorporated to include a user ID field, an object ID field, a field containing reference [to user] or other identification to a “right” and/or a user rights table (Column 112, lines 11-18). An authentication manager/secure communications manager is also provided for the VDE (Column 96, lines 13-15). To prevent unauthorized persons from accessing the certificates, encryption of secure databases may also occur to ensure VDE-provided security (column 101, lines 1-2). Control paths can also be set up to control parameters of data based upon user desires. Such a parameter could be time spent on video game, thus producing a digital object parameter related to electronic gaming while at the same time using the said security to monitor who has access to change such parameter on object within the certificate (Column 266, lines 52-67; Column 267, lines 1-5).

It would have been obvious to one skilled in the art at the time of invention to incorporate the ideas of Ginter et al. for a highly secure and versatile protection of electronic rights to the

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ideas of Walker ('549) and Chandra et al. for use in the trading of electronic rights relating to a gaming environment in order to provide users with a means to securely and safely trade rights between one another with confidence in the security of such transaction. Furthermore, Applicant notes in specification that data may be an optional element and may not be included as part of the certificate (page 24, lines 1-2) and certificate may include any information appropriate (page 23, lines 19-20). Thus the actual elements and data of the certificate are not critical to the overall functionality of the element.

Claims 9 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker (US Patent No. 5,779,549) in view of Chandra et al. (US Publication No. 2002/0169706) further in view of Walker (US Patent No. 6,168,522).

What Walker ('549) and Chandra et al. disclose, teach, and/or suggest has been discussed above and is incorporated herein.

Walker ('549) details the utilization of user devices to access and register with said game service. The system allows the player to enter the game format that they prefer to play via the associate I/O device. This preference is the communicated to the central server, which registers the user. When the game is about to begin, the server sends a message to the player in order to remind the player that the game is about to begin, thus allowing the player to access the game at the desired time and not accidentally miss the event (Column 14, lines 3-9). Furthermore, Walker ('522) teaches that the server capable of transfer procedures can provide a list of players who are currently using gaming devices on the network (Column 5, lines 39-41). It would have been obvious to one skilled in the art at the time of invention to incorporate the functionality of providing a list of users to those who are currently active on the gaming/trading system as shown

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in Walker ('522) in order to provide a means to allow active players to be able to "see" who is currently active to facilitate communication, negotiations and transfers as disclosed by Chandra et al. between said players and also allowing those who wish to transfer to "see" if their desired trading partner is currently active.

Claims 10 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker (US Patent No. 5,779,549) in view of Chandra et al. (US Publication No. 2002/0169706) further in view of Walker (US Patent No. 6,168,522) further in view of Horstmann et al. (US Patent No. 5,647,825).

What Walker ('549), Chandra et al., and Walker ('522) disclose, teach, and/or suggest has been discussed above and is incorporated herein.

As discussed in the previous action and now applicable to the new rejection, in US Patent No. 5,947,825, Horstmann et al. teaches that in a system of interconnected video games a players auditory senses can be stimulated by incorporating a microphone into each user device in which the player may talk bi-directionally with other players and a pair of loudspeakers in which the player will be able to hear (Column 1, lines 49-51).

Furthermore, Applicant states in specification for own invention that sound module may preferably include a headset device to be worn by user thus implying that the usage of the headset is non-critical and only preferable thus the substitution for a loudspeaker is of little consequential difference and obvious to one skilled in the art.

It would also be obvious to one skilled in the art at the time of invention to incorporate the communication system described by Horstmann et al. to the basic communication of transfer/negotiations as taught by Chandra et al. with the listing capability of Walker ('522) to

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the gaming system shown by Walker ('549) to bring a more sophisticated level of communication between gaming users in which they could actively talk in real time, thus speeding up the process of any pending transaction or negotiation, such as a trade, yet still be able to remotely, without having to actually meet face-to-face.

Response to Arguments

Applicant's arguments filed November 04, 2002 have been fully considered but they are not persuasive for the reasons stated below.

In response to Applicant's argument that the Examiner failed to establish a prima facie case of unpatentability (page 6, lines 1-13), the argument is conclusionary stating only that the action ambiguously fails to relate the referenced citations to the corresponding specific limitations and relate a lack of specificity to these stated ambiguities. No specific instances or factual support are pointed out to support the Applicant's claim and therefore the argument lacks illustration and support. Such conclusionary arguments are not persuasive, as the Applicant did not readily identify these examples of failure to establish a prima facie case.

In response to Applicant's argument that '549 in combination with '522 fails to teach a substantial number of the claimed elements (page 7, lines 20-21), the argument is conclusionary in that it does not cite a specific example of such or present factual support. Such conclusionary arguments are not persuasive. Furthermore, the amendment has caused that combination of references to become inapplicable thus the argument is moot in view of the new grounds of rejection.

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In response to Applicant's argument that there is no teaching to combine the '522 and '549 references (page 7, lines 22-23), the amendment has caused that combination of references to become inapplicable thus the argument is moot in view of the new grounds of rejection.

In response to Applicant's arguments that based upon the amendment of claims 1 and 21 and those dependent therefrom, the references fail to teach performing a "trading transaction for negotiating a transfer of ownership rights of the electronic certificate," the examiner agrees that the reference does not teach the limitation as amended by the Applicant. However, the addition of negotiating a transfer in a trading transaction is disclosed by Chandra et al. and would be obvious in view of Walker (US Patent No. 5,779,549) for the reasons discussed above in the grounds of rejection.

In response to the Applicant's argument that the references cited by the examiner nowhere discuss or teach an "electronic certificate" which is described in substantial detail in the specification on pages 22-24 (page 8, lines 12-15), the examiner respectfully submits that the language used to describe the electronic certificate in the specification is permissive language and does not concretely define exactly what the Applicant is claiming to be an electronic certificate. On pages 22-24, Applicant loosely defines what an electronic certificate is saying it may include a variety of information but may contain more. The certificate may include any type of authenticated digital data for example a game prize, membership information, a coupon or an object for use in a particular game. The transfer teachings of Chandra et al. teach of the transferring of such an electronic certificate in that they allow a credit to be transferred between two users. A credit falls under the definition of electronic certificate given by the Applicant in that a credit functions as a coupon to continue playing a gaming device, a game prize won as

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user has played the machine and has been awarded a balance, or an object for use in a game in that a balance is used in a game to start play of such game. The transfer of ownership rights of this credit or “electronic certificate” is taught in the Chandra et al. reference (Abstract; page 4, paragraph 45, lines 1-6). Therefore, Applicant’s argument is not persuasive.

In response to the Applicant’s argument of the means plus function language in regards to claim 42 (page 8, lines 20-23; page 9, lines 1-8), the argument is conclusionary and no support is given for what is lacking. An all encompassing statement is given that does not specifically point out that which the Applicant states is not anticipated by or made obvious in view of the references. Therefore, such conclusionary arguments are not persuasive.

In response to the Applicant’s argument that the cited references fail to teach, “wagers for gambling activities (page 9, line 16),” the examiner respectfully disagrees. Wagers for gambling activities are clearly taught in that a player must pay an entry fee to enter the tournament and the tournament can be based on games of luck or chance in which the player has no control over the progression. Such examples named are slot machines and poker tournaments (Column 12). One of ordinary skill in the art understands gambling activities to encompass activities in which a player bets on an uncertain outcome, as of a contest or playing a game of chance for stakes and both of these definitions are encompassed in the teachings of the ’549 patent as stakes are rewarded to the winner of the tournament. Therefore, the argument that the references fail to teach wagers for gambling activities is not persuasive.

In response to the Applicant’s argument that the examiner repeatedly listed elements as non-critical and thus the rejections are improper (page 10, lines 1-5), the examiner acknowledges that many items were noted as being non-critical in the office action. However, the non-

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criticality is only support for the fact that the specifics that comprise the device are not critical to the structural makeup and functionality of the device. Further, all of these parts are so well known in the art that they may be readily substituted for other similar parts. Therefore, these non-critical parts are not inherent to the functional operation of the claimed invention and their use would have been obvious to one skilled in the art at the time of invention. Applicants have never made any expressed representations in the drafting of the disclosure of what exactly the user device consists of. The words the Applicant has used to describe the invention have implicit representations dictating what elements are critical and non-critical, i.e. the use of permissive language for certain elements. The specification states that the user device may include a listing of parts but may include more. Criticality is a facet in the inquiry given by Graham v. John Deere with respect to ascertaining the differences between the prior art and the claimed invention.

In response to the Applicant's argument that the examiner repeatedly states that various claimed limitations are "well known" and appears to be taking Official Notice without expressly stating so (page 10, lines 9-11), the examiner reminds the Applicant that the examiner is not required to expressly use the term Official Notice (see MPEP 2144.03). Furthermore, in order for a challenge to the taking of Official Notice to be persuasive, said challenge must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the Official Notice (see MPEP 2144.03). In the instant case, Applicant has not provided information or argument and did not meet the burden required and therefore the argument is not persuasive. It is well known that a computer has a processor, a display, a memory, a sound module, user interfaces, and I/O ports. Further it is well known that those I/O

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ports can be network or wireless. It is also well known that the memory of the computer stores the application software as well as the operating instructions in order to carry out the purpose in which it was designed or programmed. Thus, the listing of program parts claimed by the Applicant, would be axiomatic to the functionality of '549 in view of Chandra et al. It is highly unlikely that Applicant could create the required reasonable doubt in regards to the listing of computer parts or the axiomatic nature of them.

In response to Applicant's argument that Ginter nowhere discusses or teaches an electronic certificate (page 12, lines 19-20), the examiner has noted above that the Applicant has defined an electronic certificate very broadly to encompass authenticated digital data. Ginter teaches of a container that is a logical object structure that contains authenticated digital data. This falls under Applicant's broad definition of electronic certificate. Therefore, the argument is not persuasive.

In response to the Applicant's argument that Ginter may not be accurately analogized to the claimed "electronic certificate" because both the claimed purpose and the claimed structure are significantly different, the argument is conclusionary in that it does not give specific support to the difference. Furthermore, such general statements of patentability are not persuasive.

In response to the Applicant's argument that the cited elements from Ginter are not part of the disclosed "container" and therefore not relevant to the attempt to analogize the "container" to the certificate (page 13, lines 7-10), the examiner acknowledges the statement but the Applicant needs to pinpoint exactly which cited elements are missing. The argument is conclusionary without cited support and factual backing; therefore, it is not persuasive.

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In response to the Applicant's argument that the examiner used improper hindsight in noting the motivation to combine Ginter (page 14, lines 4-5), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The concept of securely and safely trading property between two users is a well-known concept in the art and a requirement in order for user to trust and use a system. The users must be confident in the security used in trading their property or they will not entrust or utilize the system. Such a fact is very well known and would have been obvious motivation without the disclosure of the Applicant.

Conclusion

The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

US Publication No. 2001/0039206: Electronic trading of cards among users over an online environment.

Ultima Online Brokering: Transfer service for game players that allows players to securely transfer rights of items between users.

US Patent No. 6,085,176: Online market where users can trade goods and be assured of the safe keeping of such goods.

US Patent No. 6,202,051: Online market that lets users bid on a good or ownership rights thus allowing the user to negotiate a fair price.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Marks whose telephone number is (703)-305-7497. The examiner can normally be reached on Monday - Friday (7:30AM - 4:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, V. Martin-Wallace can be reached on (703)-308-1148. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-872-9302 for regular communications and (703)-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1148.

cmm
cmm

December 10, 2002



MICHAEL O'NEILL
PRIMARY EXAMINER